IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 8462 of 2003

For Approval and Signature:

Hon'ble MR.JUSTICE P.B.MAJMUDAR

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

GSRTC SURAT

Versus

UDESINH DOLATSINH JADAV

Appearance:

1. Special Civil Application No. 8462 of 2003

MS MONALI H BHATT for Petitioner No. 1

..... for Respondent No. 1,1/2

MR DIPAK R DAVE for Respondent No. 1/1

CORAM : MR.JUSTICE P.B.MAJMUDAR

Date of decision: 21/07/2003

ORAL JUDGEMENT

#. Rule. Mr.Dave waives service of rule for the

respondent. With the consent of the parties, the matter is taken up for final hearing today.

#. By filing this petition, the petitioner Corporation has challenged the award passed by the Presiding Officer, Labour Court, Surat dated 12.12.2001. During the pendency of the reference, the concerned workman has died. By the impugned award, the reference of the workman, being Reference (LCS) No.547 of 1996, was, partly allowed by the Labour Court and the Labour Court came to the conclusion by allowing the reference partly that the heirs of the deceased are entitled to receive the full back wages for the period between 30.8.1996 and 21.1.1998. The Labour Court came to the conclusion that the action of the Corporation in terminating the services of the deceased workman was not proper and, accordingly, the Labour Court came to the conclusion that the order of removal is illegal. Considering the aforesaid facts, the impugned award is passed.

#. At the time of hearing of this petition, this Court suggested to the learned advocate for the petitioner to consider the question about payment of back wages by reducing the same since the concerned workman has died. In response to the notice of this Court, Mr.Dave, who is appearing for the respondent, submitted that the widow and children are in a miserable condition and that the concerned workman died because of heart failure. He submitted that the concerned workman was removed from service on the ground of absenteeism, however, he remained absent in view of the medical grounds. The Corporation was informed by the workman at the relevant time about his absence. This aspect has already been considered by the Labour Court. Today, there is a consensus prevailing between the parties. On behalf of the Corporation, willingness is shown to pay back wages to the widow of the employee.

#. Considering the facts and circumstances of the case as well as considering the reasoning of the Labour Court, in my view, so far as the order, by which the Labour Court has set aside the order of removal, is concerned, the same is not required to be interfered with by this Court. Mr.Dave states that the respondent has agreed to give up part of the back wages. He states that, he has made the said statement after getting instruction from his client, i.e. respondent No.1/1, who is personally present in this Court. In the facts and circumstances of the case, the order of the Labour Court is modified so far as it relates to the payment of back wages for the intervening period, and instead of 100% back wages, the

respondent will be entitled to receive only 60% back wages for the intervening period. The order of the Labour Court is modified to the aforesaid extent. Rest of the order of the Labour Court is confirmed. Accordingly, the Corporation is directed to pay 60% back wages to the respondent for the intervening period and whatever benefit is required to be given to the respondent in view of this order, may be given within a period of six weeks from today.

#. It is hoped that the respondent may not have to wait for a long time for the purpose of getting the aforesaid benefit, to which she will be entitled as per this order, as, the impugned order of the Labour Court is of December 2001. The Corporation may accordingly carry out the calculation of the amount which is required to be given and the same may be given within the stipulated time, as indicated above. Mr.Dave submitted that the respondent will be entitled to get pensionary benefits. If, as per the Rules, the respondents are entitled to get the family pension benefit, the Corporation may examine the same in accordance with law. At this stage, Mr.Dave submitted that one of the respondents will be entitled to get compassionate appointment. However, the said issue is not before this Court and if one of the respondents is entitled to get compassionate appointment, it is always open for the said person to apply to the petitioner by submitting appropriate application and such application may be disposed of in accordance with law. So far as the present petition is concerned, the same is confined only with regard to the challenge to the order passed by the Labour Court.

This petition is partly allowed. Rule is made partly absolute accordingly, with no order as to costs.

(P.B.Majmudar,J)

(pathan)